

STATE OF INDIANA CLS
COUNTY OF PORTER 2015 AUG -7 A 9 53
IN THE PORTER SUPERIOR COURT
SITTING AT VALPARAISO, INDIANA

SHERRY L. BEOUGHTER,
Plaintiff,

v.

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY, and
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY.
Defendants.)

CAUSE NO. 441001-1508-CT-6705

COMPLAINT and JURY DEMAND

Comes now Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barks of Blachly, Tabor, Bozik & Hartman, LLC, for its Complaint and Jury Demand against Defendants, State Farm Mutual Automobile Insurance Company ("State Farm") and Universal Underwriters Insurance Company ("Universal Underwriters") and state the following:

BACKGROUND

1. That on the 10th day of August 2013, Plaintiff, Sherry L. Beoughter, was operating a motor vehicle owned by Team Chevrolet, Inc while test driving the vehicle westbound on U.S. Highway 30 and was stopped at a red light in the left turn lane at the intersection of U.S. Highway 30 and CR 250 West in Valparaiso, Porter County, Indiana.

2. Hannah E. Aguirre, was operating a separate motor vehicle westbound on U.S. Highway 30, and attempting to make a left hand turn onto southbound CR 250 West, did not stop for the traffic signal at the intersection of U.S. Highway 30 and CR

EXHIBIT

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250 West, and collided with the vehicle in which Plaintiff, Sherry L. Beoughter was driving.

3. Defendant, Hannah E. Aguirre, operated her vehicle in a negligent manner by failing to stop for the traffic signal at the intersection of U.S. Highway 30 and CR 250 West and by striking the vehicle in which Plaintiff, Sherry L. Beoughter, was riding, thereby proximately causing injuries to Plaintiff.

4. Hannah E. Aguirre is the defendant to a suit filed in Porter Superior Court under Cause No. 64D02-1411-CT-009837. The same is subject to dismissal after tender of policy proceeds and settlement with Plaintiff.

5. Defendant, Universal Underwriters, is a corporation organized and incorporated under the laws of the State of Kansas. Said Defendant is licensed and authorized to do business and does business as an insurer in the State of Indiana.

6. On or about August 10, 2013, Defendant, Universal Underwriters, had a policy of automobile insurance in effect insuring the automobile from Team Chevrolet, Inc. and also insuring Plaintiff as an additional insured. A copy of the policy of insurance was provided to Plaintiff on August 5, 2015 and is not attached hereto due to large size; the same is also in the possession of the Defendant in compliance with Ind. Trial Rule 9.2 and the Plaintiff will attach the same if required to do so pursuant to rule.

7. At all times pertinent hereto, Plaintiff was in full compliance with all terms and conditions of coverage as an additional insured under the Team Chevrolet, Inc. and/or the underinsured motorist coverage of the State Farm policy as indicated below.

8. That Plaintiff, Sherry L. Beoughter, received injuries, some of which were temporary in nature and some of which are permanent and will not heal.

9. That Plaintiff, Sherry L. Beoughter, has incurred and will continue to incur expenses for various health care providers on account of the injuries sustained by virtue of the negligence of the Defendants. Plaintiff has also lost wages and will lose wages in the future.

10. That Plaintiff, Sherry L. Beoughter, has been deprived of the opportunity and ability of enjoying life free of pain and permanent injury, and has therefore been denied, to a substantial extent, the pleasure of being alive, all as the result of the Defendant, who negligently caused the injuries sustained by the Plaintiff.

11. Hannah Aguirre did not have sufficient coverage given the damages to Plaintiff and was therefore an underinsured motorist pursuant to the insurance policy of Defendant Universal Underwriters.

12. Hannah Aguirre did not have sufficient coverage given the damages to Plaintiff and was therefore an underinsured motorist pursuant to the insurance policy of Defendant State Farm.

13. State Farm and Universal Underwriters were given notice of the tender of policy proceeds from Hannah Aguirre to Plaintiff and approved the acceptance of the same by Plaintiff.

14. Plaintiff has made a demand for underinsured motorist coverage against Universal Underwriters as of June 5, 2015 following an acceptance of the policy limits tendered by Hannah Aguirre. The demand also requested a copy of the policy of insurance and submitted, per the request of Universal Underwriters, medical records and bills for Plaintiff.

15. Universal Underwriters made no further request for information from Plaintiff, but failed to respond to Plaintiff and/or to present its full policy until August 5, 2015.

16. Universal Underwriters indicated, for the first time, on August 5, 2015 that relevant coverage was a secondary underinsurance policy to plaintiff's personal policy from State Farm.

17. Plaintiff is the owner of an automobile policy of insurance, Policy Number 596030914, issued by Defendant, State Farm.

18. Defendant, State Farm, is a corporation organized and incorporated under the laws of the State of Illinois. Said Defendant is licensed and authorized to do business and does business as an insurer in the State of Indiana.

19. On or about August 10, 2013, Plaintiff had a policy of automobile insurance in effect. Said policy contained uninsured/underinsured coverage that undertook to indemnify and compensate Plaintiff for loss and damage due to an automobile crash.

20. State Farm provided its policy of insurance on February 11, 2015 to Plaintiff. A copy is not attached hereto due to large size; the same is also in the possession of the Defendant in compliance with Ind. Trial Rule 9.2 and the Plaintiff will attach the same if required to do so pursuant to rule.

21. State Farm maintains that it is a secondary underinsured motorist carrier for Plaintiff after first priority of Universal Underwriters.

COUNT I

Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barkes of Blachly, Tabor, Bozik & Hartman, LLC, for Count I of her Complaint for damages against Universal Underwriters Insurance Company states as follows:

22. Plaintiff incorporates by reference all paragraphs 1 through 21 of her Complaint as though originally set forth herein.

23. The negligent party in the automobile crash, Hannah E. Aguirre, was an underinsured motorist.

24. Plaintiff is entitled to underinsured motorist coverage benefits under their policy with Defendant, Universal Underwriters Insurance Company.

WHEREFORE, Plaintiff, Sherry L. Beoughter, by counsel, prays for judgment against the Defendant, Universal Underwriters Insurance Company, requiring the Defendant to fully compensate Plaintiff's claim, for attorney's fees, costs of this action, pre-judgment interest, and for all other just and proper relief.

COUNT II

Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barkes of Blachly, Tabor, Bozik & Hartman, LLC, for Count II of her complaint for damages against State Farm Mutual Automobile Insurance Company states as follows:

25. Plaintiff incorporates by reference all paragraphs 1 through 24 of her Complaint as though originally set forth herein.

26. Upon information and belief, the negligent party in the automobile crash, Hannah E. Aguirre, was an underinsured motorist.

27. Plaintiff is entitled to uninsured/underinsured motorist coverage benefits under her policy with Defendant, State Farm Mutual Automobile Insurance Company.

WHEREFORE, Plaintiff prays for judgment against the Defendant, State Farm Mutual Automobile Insurance Company, requiring the Defendant to fully compensate Plaintiff's claim, for attorney's fees, costs of this action, pre-judgment interest, and for all other just and proper relief.

COUNT III BAD FAITH

Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barks of Blachly, Tabor, Bozik & Hartman, LLC, for Count III of her Complaint for damages against Universal Underwriters Insurance Company states as follows:

28. Plaintiff incorporates by reference all paragraphs 1 through 27 of her Complaint as though originally set forth herein.

29. That the Defendant, Universal Underwriters, acted with malice, gross negligence, heedless indifference, and recklessness which was not the result of mistake of law or fact, honest error of judgment, overzealousness, mere negligence, or other human failing, when it willfully, wantonly, and in gross bad faith failed and refused to compensate the Plaintiff for losses under the provisions of her aforementioned insurance policy.

30. That Defendant in bad faith intentionally, or in reckless disregard, delayed payment to interfere with Plaintiff's rights under the policy of insurance and further withheld information in order to delay Plaintiff's claims in reckless disregard of, or to intentionally interfere with, Plaintiff's claim under one or both policies.

WHEREFORE, Plaintiff prays for judgment against the Defendant, Universal Underwriters Insurance Company, requiring the Defendant to fully compensate Plaintiff's claim, for attorney's fees, costs of this action, pre-judgment interest, and for all other just and proper relief, including punitive or liquidated damages arising as a result of bad faith.

COUNT IV - DECLARATORY ACTION

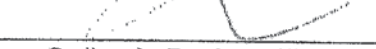
Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barkes of Blachly, Tabor, Bozik & Hartman, LLC, for Count IV of her Complaint for damages against Universal Underwriters Insurance Company states as follows:

31. Plaintiff incorporates by reference all paragraphs 1 through 30 of her Complaint as though originally set forth herein.

32. Plaintiff requests this court determine, if necessary, the insurance policies in order to establish the priority for payment of relevant underinsured motorist proceeds.

WHEREFORE, Plaintiff prays for declaratory judgment against the Defendants State Farm Mutual Automobile Insurance Company and/or Universal Underwrites Insurance Company, Inc., requiring the Defendant to fully compensate Plaintiff's underinsured motorist claim, for attorney's fees, costs of this action, pre-judgment interest, and for all other just and proper relief.

Respectfully submitted,
BLACHLY, TABOR, BOZIK & HARTMAN, LLC
Attorneys for Plaintiff

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JURY DEMAND

Plaintiff, Sherry L. Beoughter, by counsel, Colby A. Barkes of Blachly, Tabor, Bozik & Hartman, LLC, requests trial by jury on all matters herein.

Respectfully submitted,

BLACHLY, TABOR, BOZIK & HARTMAN
Attorneys for Plaintiff

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